



State of California
Franchise Tax Board

Resident and Nonresident Withholding Guidelines

For additional information, contact Withholding Services and Compliance

Telephone: 888.792.4900
916.845.4900 (not toll-free)

Our automated telephone system allows you to access important information seven days a week, 24 hours a day. If the system does not completely answer your questions, you may speak with a representative Monday through Friday between the hours of 8 a.m. and 5 p.m., except state holidays.

To get forms, publications, and other withholding information, go to our website or email us:

Website: ftb.ca.gov
Email Address: WSCS.GEN@ftb.ca.gov
(for nonconfidential email)

FAX: 916.845.9512

Mailing Address: WITHHOLDING SERVICES AND COMPLIANCE
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651

Express mail/Overnight delivery: WITHHOLDING SERVICES AND COMPLIANCE MS F182
FRANCHISE TAX BOARD
SACRAMENTO CA 95827

Get FTB 1131, *Franchise Tax Board Privacy Notice*, at ftb.ca.gov, or call us at 800.338.0505. If outside the United States, call 916.845.6500 (not toll-free).

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Fuera de los Estados Unidos, llame al (cargos aplican) 916.845.6500
Sitio en el Internet ftb.ca.gov

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Purpose

This publication will assist you to:

- Withhold on payments to nonresident independent contractors, including entertainers.
- Withhold on payments of rents or royalties to nonresidents.
- Withhold on distributions to nonresident beneficiaries.
- Meet domestic and foreign nonresident partner withholding requirements.

For information on real estate withholding, please refer to the Franchise Tax Board (FTB) Publication 1016, *Real Estate Withholding Guidelines*.

For information on employee wage withholding, contact the California Employment Development Department.

Law References

General

California Revenue and Taxation Code (R&TC) Section 18662 and the related regulations require the withholding of California income or franchise taxes from payments made to nonresident independent contractors performing services in California. Withholding is also required on other payments of California source income to nonresident payees and on distributions of California source income to nonresident beneficiaries.

R&TC Section 18668 makes the withholding agent liable for any tax required to have been withheld.

R&TC Section 17951 contains the provision requiring nonresidents to be taxed on all income from California sources. Payments made for personal services performed in California are California source income. Where the nonresident lives, the location where the contract for services is entered into, or the place of payment does not determine the source of income from personal services. The source of income from personal services is the location where the services are performed. Nonresidents must include in California gross income the gross payments for all services performed in California.

Domestic (nonforeign) S Corporation Shareholders and Partners

R&TC Section 18662 and the related regulations require S corporations and partnerships to withhold income taxes when distributing current or prior year income to domestic S corporation shareholders and partners. Withholding is not required if distributions to an S corporation shareholder or partner are \$1,500 or less during the calendar year.

Foreign (non-U.S.) Partners

R&TC Section 18666 requires withholding on income from California sources, which is allocated to foreign partners. R&TC Section 18666 generally conforms to federal Internal Revenue Code (IRC) Section 1446 to the extent that the income is from California sources.

Limited Liability Companies (LLCs) and Limited Liability Partnerships (LLPs)

For withholding purposes, both LLCs classified as partnerships and LLPs are treated like partnerships. For purposes of this publication, LLCs and LLPs are generally included in the term “partnership” and members are generally included in the term “partner.” LLC and LLP returns are included in the term “partnership returns.” Form 568, *Limited Liability Company Return of Income*, is included in the Form 565, *Partnership Return of Income*. However, LLCs should specifically see questions 26-27 relating to consenting and nonconsenting members.

What's New

Effective January 1, 2009, FTB Publication 1017, *Nonresident Withholding Guidelines*, changed its name to *Resident and Nonresident Withholding Guidelines*. The purpose of the name change is to make the publication transparent so that it applies to residents as well as nonresidents. Therefore, the FAQs within this publication are relevant to both resident and nonresident withholding issues. We also updated form names for 2009 to suit your filing needs.

The tax forms with name changes for 2009 are:

- Form 592, *Quarterly Resident and Nonresident Withholding Statement*, previously known as *Quarterly Nonresident Withholding Statement*.
- Form 592-B, *Resident and Nonresident Withholding Tax Statement*, previously known as *Nonresident Withholding Tax Statement*.

General Withholding Requirements

1. What is withholding?

Withholding is a prepayment of California state income or franchise tax (similar to wage withholding).

2. Who is the withholding agent?

Generally, the withholding agent is the person, including for this purpose, corporations, partnerships, fiduciaries, and state officers, agencies or political subdivisions, charged by law, regulation, or FTB to withhold any tax, interest, or penalties from payments to the taxpayer.

3. Who is the payee?

Generally, the payee is the person, including for this purpose, corporations, partnerships, fiduciaries, and state officers, agencies or political subdivisions that receive items of income from a payer. It also includes partners, beneficiaries, shareholders, or members that receive payments or distributions from a pass-through entity, estate, or trust. A payee may also include vendors that provide services to the payer.

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- 4. Who is the payer?**
Generally, the payer is the person, including for this purpose, corporations, partnerships, fiduciaries, and state officers, agencies or political subdivisions that pays an item of income or makes a distribution to a payee.
- 5. What is a partnership?**
The term partnership has the same meaning as defined in R&TC Section 17008. For purposes of withholding, both LLCs classified as partnerships and LLPs are treated as partnerships.
- 6. What is a partner?**
The term partner has the same meaning as defined in R&TC Section 17008. For purposes of withholding, members of both LLCs classified as partnerships and LLPs are generally included in the term partner.
- 7. When is a withholding agent required to withhold?**
A withholding agent is required to withhold from all payments or distributions of California source income made to a nonresident payee when the payments or distributions are greater than \$1,500 for the calendar year, unless the withholding agent receives authorization from us for a waiver or a reduced withholding amount.
- 8. When should a withholding agent start withholding if the total payments to a nonresident are expected to exceed \$1,500 during the calendar year?**
Withholding is optional, at the discretion of the withholding agent, on the first \$1,500 in payments made during the calendar year.
- 9. Is “catch-up” withholding required if the withholding agent reasonably believed the total payments to a nonresident for the year would not exceed \$1,500, but later determines the total payments will exceed \$1,500?**
No. Withholding is optional, at the discretion of the withholding agent, on the first \$1,500 in payments made during the calendar year. Withholding must begin as soon as the total payments of California source income for the calendar year exceed \$1,500.
- 10. What is the withholding rate? (Domestic nonforeign)**
The withholding rate is seven percent of:
- The gross payment made to nonresident:
 - Independent contractors for services performed in California.
 - Recipients of California rents or royalties.
 - Distributions of California source income made to nonresident beneficiaries of estates or trusts.
 - Distributions of California source income to domestic nonresident S corporation shareholders and partners.
- 11. What are the withholding rates for foreign (non-U.S.) partners?**
The withholding rate is California’s highest tax rate for each partner’s entity type. The current withholding rates are:
- Noncorporate partners - 9.3%
 - Corporate partners - 8.84%
 - Foreign bank and financial institution partners - 10.84%
- 12. Are there exceptions to withholding?**
Yes. Withholding is not required if one of the following exceptions is met:
- The individual, S corporation shareholder, or partner is a California resident.
 - The payee meets one of the exemptions on Form 590, *Withholding Exemption Certificate*.
 - The total payments or distributions of California source income to the nonresident are equal to or less than \$1,500 for the calendar year.
 - The payment is for goods.
 - The services provided by the nonresident are not performed in California.
 - The nonresident payee or the withholding agent receives written authorization from us waiving the withholding.
 - The payments are income from intangible personal property, such as interest and dividends, unless the property has acquired a business situs in this state.
 - The payments are compensation from a motor carrier providing transportation in two or more states, subject to section 11504(b) of title 49 of the United States Code.
 - The payments are wages paid to employees. For information on employee wage withholding, contact California Employment Development Department.
 - The payee is a bank or banking association.
 - The payments are made to a nonresident corporate director for director’s services.
 - The distribution is exempt income.
 - The partner has certified that the income was previously reported on the partner’s California tax return.
- Note:** The exemption for motor carriers does not apply to all transportation providers. Similar exemptions for payments made to air, water, and rail carriers apply only to nonresident employees and not to independent contractors.
- 13. Are withholding agents required to notify nonresidents of the withholding requirements?**
No. Withholding agents are not required to notify nonresidents of the withholding requirements. However, we recommend that they explain California’s withholding requirements to avoid confusion.
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Income Subject to Withholding

14. What types of payments are subject to withholding?

The following California source income is subject to withholding:

- Payments made for personal services performed in California. Where the nonresident lives, the location where the contract for services is entered into, or the place of payment does not determine the source of income from personal services. The source of income from personal services is the location where the services are performed.
- Payments made to nonresident entertainers for services rendered in California. These payments include, but are not limited to, guaranteed payments, overages, royalties, and residual payments.
- Payments received for a covenant not to compete in California.
- Payments releasing a contractual obligation to perform services in California.
- Income from options received because of performing personal services in California.
- Bonuses paid for services performed in California.
- Rents and royalties from assets located in California.
- Distributions of California source income. This is different from foreign partner withholding under R&TC 18666, which is based on allocations (not distributions) of income.

Note: For withholding purposes, "California source income" does not include return of capital, income sourced in another state, or other distributions not taxable by California.

15. What types of payments are not subject to withholding?

The following types of payments are not subject to withholding:

- Payments made to nonresident directors of a corporation for attending board meetings in California.
- Income from intangible personal property such as stocks, bonds, notes, etc., is not income from California sources unless the property has acquired a business situs in California. California business situs is acquired when the property is employed as capital in California. A California business situs is also acquired when the possession and control of the property has been localized in connection with a business, trade, or profession in California so that its substantial use and value attach to and become an asset of that business. The entire income, including the gain from the sale of such an asset, is income from California sources. Examples include an intangible asset pledged as security for a loan connected to a California business or a bank account maintained to pay expenses related

to business activities in California. Determining business situs is a difficult area where bright-line tests have not been developed. If the withholding agent is certain that an intangible asset has acquired a California business situs, withholding is required. If the status is not clear, the withholding agent is not required to withhold.

16. Are payments that are exempt from federal tax due to tax treaties (federal Form W-8, *Certificate of Foreign Status*), also exempt from California tax and withholding?

No. California does not conform to federal law relating to income protected by U.S. tax treaties. California income is taxable and subject to withholding. Nonresident aliens are required to report income from California sources on Form 540NR, *California Nonresident or Part-Year Resident Income Tax Return*.

17. Is withholding required on payments made to reimburse expenses?

If the reimbursement is separately accounted for and is not subject to federal Form 1099 reporting, withholding is not required on payments to reimburse nonresidents for expenses related to services performed in California (corporate payees, for purposes of this exception, should be treated as individual persons). When the reimbursed expenses do not meet these requirements, withholding agents should withhold on the total payment.

18. How do you determine the amount subject to withholding with income from inside and outside California?

For withholding purposes, use any reasonable method to approximate the ratio of California income to worldwide income. Reasonable methods include using the prior year's ratio or apportionment factors, annualizing current year data, and using actual year-to-date figures. (See California Schedule R, *Apportionment and Allocation of Income*, for more information on apportionment.) We do not expect exactness in meeting this requirement. Making a good faith effort to comply with the withholding requirements will satisfy this requirement.

Entities Subject to Withholding

19. Which nonresident entities are subject to withholding when receiving payments or distributions of California source income?

Nonresident entities subject to withholding include:

- Individuals who are nonresidents of California.
- Corporations that do not have a permanent place of business in California and are not qualified through the Office of the Secretary of State (SOS) to do business in California.
- Partnerships and LLCs that do not have a permanent place of business in California and are not registered through SOS.
- Nonresident estates and trusts.

- Domestic nonresident partners include:
 - Individuals who are nonresidents of California.
 - Corporations that are not qualified by SOS to do business in California or do not have a permanent place of business in California.
 - Nonresident estates and trusts.
 - Partnerships that do not have a permanent place of business in California.

20. Are withholding agents required to withhold when vendors perform services in connection with the sale of goods?

Yes. Withholding is required on the portion of the sale that relates to services provided in California. Form 587, *Nonresident Withholding Allocation Worksheet*, may be used to distinguish the portion of payments made for goods from the portion for services.

21. Is withholding required on distributions to non-grantor trusts?

Yes. Withholding is required on distributions to non-grantor trusts unless at least one trustee is a California resident. Withholding agents may rely on a certification using Form 590, *Withholding Exemption Certificate*.

22. Is withholding required on distributions to grantor trusts?

Yes. A grantor trust is where the grantor retains substantial control and is deemed to remain the owner. As a result, a grantor trust is disregarded for tax purposes. The determination to withhold depends on the residency of the grantor. If the grantor is a California resident, the grantor may certify to the residency exemption on Form 590 noting that the grantor is signing as the grantor of a grantor trust.

23. Is withholding required on distributions to estates?

Yes. Withholding is required on distributions to estates unless the decedent was a California resident at the date of death. Withholding agents may rely on a certificate by the estate that the decedent was a California resident at the date of death. Use Form 590 for this purpose.

24. Is withholding required on distributions to tax-exempt entities, such as churches and pension plans (i.e., IRAs, and other tax-deferred plans)?

No. Withholding is not required on entities exempt from tax under either California or federal law. The withholding agent may rely on a completed Form 590, stating it is exempt from tax.

25. Is withholding required when tax-exempt entities make payments to nonresident payees?

Yes. Regardless of your tax or organizational status, when a payment is made to a nonresident for a service performed in California, withholding may be required.

26. Are LLCs required to withhold on nonresident members who have signed FTB 3832, *Limited Liability Company Nonresident Members' Consent*?

Yes. The LLCs must withhold on nonresident members who have signed FTB 3832.

27. Are LLCs required to withhold on nonresident members if the nonresident members have not signed FTB 3832, and the LLCs are paying the nonconsenting nonresident tax for the nonconsenting members?

Yes. Payment of nonconsenting nonresident tax does not relieve LLCs of the requirement to withhold on nonresident members. However, LLCs who can show they pay the nonconsenting nonresident tax on all nonconsenting members may request a waiver from us for withholding on their nonconsenting members.

28. When are S corporations and partnerships required to withhold?

S corporations and partnerships must withhold on distributions of California source income to nonresident S corporation shareholders and partners. This includes, but is not limited to, distributions of current year income and distributions of prior year income that were not previously reported as income from California sources on the S corporation shareholder's or partner's California return. Withholding is not required if California source income distributed to the S corporation shareholder or partner is \$1,500 or less during the calendar year, or the S corporation shareholder or partner has received a waiver of withholding from us.

29. Are payments to nonqualified S corporations subject to withholding?

Yes. Payments to S corporations that do not have a permanent place of business in California and are not qualified through the SOS to do business in California are subject to withholding.

30. What entities are subject to foreign partner withholding?

California conforms to the federal definition of foreign partners. Thus, foreign partners who are nonresident alien individuals, foreign corporations, foreign partnerships, foreign estates, or foreign trusts are subject to foreign partner withholding.

Withholding Exemptions

31. Who is exempt from withholding?

The following individuals and entities are exempt from withholding:

- California residents.
- Corporations with a permanent place of business in California.
- Corporations qualified through SOS to do business in California.
- Partnerships and LLCs with a permanent place of business in California.
- Tax-exempt organizations, under either California or federal law.

- Insurance companies, IRAs, or Qualified Pension/Profit Sharing Plans.
- California non-grantor trusts.
- Estates where the deceased was a California resident at the time of death.

Payees must complete Form 590 to certify their status.

Note: Exemptions apply to the actual payee and not to their agent or representative.

32. Who is a California resident?

The term “resident” includes every individual who is in California for other than a temporary or transitory purpose and every individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose extending over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a nonresident. For more information on residency, see FTB Pub. 1031, *Guidelines for Determining Resident Status*.

33. How can withholding agents identify resident payees?

The following are examples of accepted reasonable methods:

Example #1:

Withholding agents may send their payees a Form 590. Payees may use this form to certify their residency status.

Note: For Form 590 to be valid, payees must include their taxpayer identification number.

Example #2:

Withholding agents can rely on a California street address as an indication of a payee’s residency status. If the payee has a California street address, no withholding is required and Form 590 is not needed to verify residency status unless the withholding agent has reason to believe such address is merely a forwarding address. A valid California street address does not include a California post office box, or an **in care of** address. If a change of address occurs, the withholding agent must reevaluate the payee’s residency status. If withholding agents need assistance in this area, they can contact us at 916.845.4900.

34. When does a corporation have a permanent place of business in California?

A corporation has a permanent place of business in this state when it is organized and existing under the laws of this state or it has qualified through SOS to transact intrastate business. A corporation not qualified to transact intrastate business (such as a corporation engaged exclusively in interstate commerce) will be considered as having a permanent place of business in this state only if it maintains an office in this state that is permanently staffed by its employees.

35. How can withholding agents determine if a corporation has a permanent place of business in California or is qualified to do business in this state?

The following are examples of accepted reasonable methods:

Example #1:

Withholding agents may rely on a completed California Form 590 stating the corporation has a permanent place of business in California. This protects the withholding agent from penalties for failure to withhold (unless the withholding agent has actual knowledge that the statement is false).

Note: For Form 590 to be valid, a corporate payee must include its taxpayer identification number.

Example #2:

If a corporation has a permanent place of business in California, it is required to qualify with Secretary of State. Withholding agents may determine if a corporate payee is qualified to do business in this state by contacting:

**SECRETARY OF STATE
CERTIFICATION AND RECORDS
PO BOX 944260
SACRAMENTO, CA 94244-2600
916.657.5448**

Send a self-addressed stamped envelope. There is a \$5 fee for each corporation status report.

Example #3:

Withholding agents may provide a list of corporate payees to Withholding Services and Compliance. We will review that list and notify the withholding agent of which corporate payees should be withheld upon.

36. What is the difference between corporations incorporated in California and corporations qualified to do business in California for withholding purposes?

Corporations that incorporate in California are automatically qualified to do business in California as long as they file all returns and pay all taxes due. Corporations not incorporated in California, but incorporated under the laws of other states or countries, can still qualify to do business in California. SOS administers the California Corporations Code as it applies to incorporation and qualification to do business in California. Corporation payees incorporated in California or qualified to do business in California are exempt from the withholding requirements.

37. What significance does the doing business standard have in determining income subject to withholding?

California taxes the income derived from business activity within the state. If a nonresident payee is doing business in California and is earning California source income, withholding is required unless the payee meets an exemption.

38. What if the corporate payee is not qualified through the SOS and does not have a permanent place of business in this state, but is included in the combined report of a corporation that does have a permanent place of business in California? Can Form 590 be completed to exempt it from withholding?

No. But the payee may request a waiver from us using Form 588, *Nonresident Withholding Waiver Request*.

39. What information must be included on a Form 590 to be valid?

Form 590 must include the:

- Name and address of the payee.
- Payee's taxpayer identification number (SSN, FEIN, or CA corp number).
- The withholding agent's name.
- A box checked in front of the applicable exemption.
- Name and title of the individual completing the form.
- The individual's signature and date.

40. What should the withholding agent do if a payee gives the withholding agent an incomplete Form 590?

Before accepting Form 590 from a payee, the withholding agent should check the Form 590 for the following:

- Name and address of the payee.
- Payee's taxpayer identification number (SSN, FEIN, or CA corp number).
- The withholding agent's name.
- A box checked in front of the applicable exemption.
- Name and title of the individual completing the form.
- The individual's signature and date.

Note: An incomplete Form 590 is invalid and the withholding agent should not accept it. The withholding agent is required to withhold tax on payments made to the payee until a valid form is received. The withholding agent should also verify the information on the form pertains to the payee and not to the payee's representative or agent.

41. Must a payee's Form 590 be renewed each year?

No. The certification does not need to be renewed annually. The certification remains valid until the payee's status changes. The withholding agent should evaluate the need for securing a new Form 590 when any indication of a change in residency status occurs, such as a change of address, etc.

42. What should a withholding agent do if they receive a false Form 590?

The withholding agent should not accept the Form 590 and should inform the payee that the form was not accepted. The withholding agent and the payee can contact us if they have any questions.

43. Is the withholding agent liable for knowingly accepting a false Form 590?

Yes. A withholding agent who knowingly accepts a false Form 590 is subject to the liabilities and penalties relating to failure to withhold.

Income Allocation

44. In situations where a nonresident payee is performing services within California as well as outside of California, how does the withholding agent determine what portion of the services are provided within California?

The following are examples of accepted reasonable methods:

Method 1:

Withholding agent asks the payee to complete Form 587, *Nonresident Income Allocation Worksheet*. This form is used to determine the amount of California source income subject to withholding. The payee completes and returns Form 587 to the withholding agent. This information determines if withholding is required, and, if required, what portion of the payment is subject to withholding.

Example

A withholding agent sends Form 587 to an out-of-state independent contractor (vendor) before making a payment for services. The total contract amount is \$100,000. The vendor returns Form 587, certifying that \$60,000 is for services performed in California and \$40,000 is for work performed in another state. The amount of withholding would be:

\$60,000	California source income
X 7%	Withholding rate
\$ 4,200	

Note: If the amount subject to withholding (\$60,000 in the example above) is equal to or less than \$1,500, no withholding is required.

Method 2:

The withholding agent relies on the nature of the work to indicate where the services are performed. For example, a construction company building a shopping center is most likely performing services where the shopping center is located. We do not expect exactness in determining what portion, or ratio, of the services is performed in California. A good faith effort by the withholding agent to comply with the withholding rules will satisfy this requirement. Withholding agents may use other reasonable methods approved by us. For assistance in this area, contact our Withholding Service and Compliance staff at 916.845.4900.

45. How much reliance can be placed on allocations provided by payees on Form 587?

Withholding agents may rely on allocations provided by payees on a properly completed and signed Form 587. No additional verification efforts are needed. If a withholding agent suspects the

Form 587 has been fraudulently completed, they should provide us a copy of the form and include an explanation of why they believe the form is fraudulent. The withholding agent may rely on the information provided by the vendor until we issue notification to revise the allocation or withdraw the exemption. All information is strictly confidential.

46. How long should withholding agents keep a Form 587 completed by a payee?

Retain the form for a minimum of five years.

47. When using an allocation based on time, what is the appropriate denominator for the ratio?

Compensation for personal services performed by nonresident independent contractors will normally be allocated to California based on working days in California to total working days in and out of California. The denominator is the total number of days actually worked on the particular job. The number of days covered by the vendor's contract can only be used when the vendor is:

- Hired for the exclusive use of the withholding agent for the entire contract period.
- Required to be available to work each day at the discretion of the withholding agent during the contract period.
- Being paid whether or not providing services.

Days spent acquiring knowledge, skills, or experiences necessary as a condition of employment are not considered work days (*Marc Wilson v. Franchise Tax Board* (1993) 20 Cal. App. 4th 1441). Professionals and others who bill by the hour allocate compensation based on the number of billable hours worked in California to the total number of billable hours related to the particular service.

48. When payments are made for goods and services, how may withholding agents determine the portion of the payment related to services?

We accept any reasonable method. One method is to use the same allocation of goods and services that is used for sales and use tax purposes in the sales contract. The portion of the payment not subject to sales or use tax would be considered payment for services and subject to withholding. If a payment is not subject to California sales or use tax, but is subject to another state's sales or use tax, withholding agents may use the allocation for the other state to determine the portion relating to services and subject to withholding. Generally, under sales and use tax laws, charges for labor or services for installation are not subject to sales or use tax. Payments for installation would be subject to withholding. Charges for designing, consulting, performing feasibility studies, evaluating bids, and providing training services are also considered service activities if they are separately stated and not part of the sale of tangible personal property. Payments for repairs would be subject to withholding except for parts that are separately

stated on the invoice. As payments for mandatory maintenance contracts or warranties are subject to sales tax, even if the cost of the maintenance contract or warranty is separately stated, the payments would not be subject to withholding. However, payments for optional maintenance contracts or warranties are not subject to sales tax and would be subject to withholding. One exception is transportation charges. Even if the payment for transportation charges is not subject to sales or use tax, withholding is not required. In unique situations, withholding agents should contact us at 916.845.4900.

Reduced Withholding and Waivers of Withholding

Reduced Withholding

49. Are requests for reduced withholding amounts allowed?

We may authorize a reduced withholding amount when the seven percent withholding on the gross California source payment results in significant overwithholding. Reduced withholding amounts are available to domestic nonresident payees only.

50. May foreign partners receive a reduction in withholding?

No. There is no provision in R&TC Section 18666 or IRC Section 1446 to allow reduced withholding for foreign nonresident partners.

51. Who initiates a request for reduced withholding?

The nonresident payee must complete Form 589, *Nonresident Reduced Withholding Request*, and submit it before receiving payment for services from the withholding agent. The payee must provide the gross California source payment, any expenses relevant to the services being performed, and calculate a proposed reduced withholding amount.

52. How is a reduced withholding amount approved?

Upon receipt of Form 589, we review the information on the form. We may request to review all relevant documentation including, but not limited to, expense documentation such as receipts and contracts.

53. When should the payee send Form 589?

Send Form 589 at least 10 business days prior to receiving payment for the services being performed. If requests are received less than 10 business days prior to the payee receiving payment for services, seven percent withholding on the gross California source payment may be required. Send request to:

**WITHHOLDING SERVICES AND COMPLIANCE
FRANCHISE TAX BOARD**

PO BOX 942867

SACRAMENTO CA 94267-0651

OR

FAX: 916.845.9512

54. How quickly will I get a response to the Form 589?

We generally respond within one week, if the Form 589 is complete and signed. However, the processing time may vary if we ask for supporting documentation.

55. Are withholding agents required to honor the authorized reduced withholding amounts?

Yes. Withholding agents must honor authorized reduced amounts.

56. Does an S corporation or partnership need to request a reduction in withholding if they have no California source income?

No. If the distribution is a return of capital or does not represent California source income, withholding is not required and a reduction is not necessary.

57. Is withholding required if the withholding agent has not received Form 3952, *Request for Reduced Withholding – Approved*, from FTB confirming a reduction in withholding before the nonresident is paid?

Yes. The withholding agent must withhold seven percent of the gross California source payment if they did not receive Form 3952 approving a reduction in withholding before the nonresident is paid for their services.

Waivers of Withholding

58. Are waivers of withholding granted?

We may authorize a waiver of withholding if the payee has California tax returns on file for the past two taxable years in which the payee has a filing requirement **and** is considered current on any outstanding FTB tax obligations. If the payee does not have a current filing history, but is making estimated tax payments for the current tax year and is current on any outstanding FTB tax obligations, we may issue a waiver that is good for a one-year period. Waivers of the withholding requirements are available to domestic nonresident payees only. For more information about who qualifies for a waiver, see Form 588, *Nonresident Withholding Waiver Request*.

59. May foreign partners receive a waiver from withholding?

No. There is no provision in either R&TC Section 18666 or IRC Section 1446 to allow waivers for foreign nonresident partners.

60. Can a payee receive a waiver for their first payment of California source income?

Yes. If the payee has never received payment for services performed in California, and the payment is less than \$1,500, then withholding is not generally required. However, if the payment exceeds \$1,500, the payee must meet one of the criteria on Form 588, *Nonresident Withholding Waiver Request*, in order to receive a waiver from withholding.

61. What are the procedures for requesting a waiver?

Nonresident payees or withholding agents should complete Form 588 and attach any pertinent facts to support the request. If sufficient information is not provided, we may request additional information or deny the request. Send request to:

**WITHHOLDING SERVICES AND COMPLIANCE
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651**

OR

FAX: 916.845.9512

62. What is the time frame for a response to a waiver request?

We generally respond within 21 working days. We will contact the requester if additional information is required.

63. Must a waiver be requested for each payment or distribution?

No. Waivers are generally granted for fixed periods with a maximum expiration date of two years. However, waivers may be granted for a specific payment or distribution, if requested.

64. Are withholding agents required to honor authorized waivers?

Yes. Withholding agents must honor authorized waivers.

65. Does an S corporation or partnership need to request a waiver from withholding if they have no California source income?

No. If the distribution is a return of capital or does not represent California source income, withholding is not required and a waiver is not necessary.

66. How does a nonresident qualify for a waiver?

The requirements to qualify for a waiver include, but are not limited to:

- Payee has California tax returns on file for the past two taxable years in which the payee has a filing requirement **and** is considered current on any outstanding FTB tax obligations.
- Payee is making timely estimated tax payments for the current taxable year **and** is considered current on any outstanding FTB tax obligations.

See Form 588, *Nonresident Withholding Waiver Request*, for details.

67. What should a withholding agent do if they withheld seven percent but have not remitted the amount to the FTB and a waiver has been authorized?

The withholding agent must return any amounts withheld.

Nonwage, Independent Contractors, Rents and Royalties, Beneficiaries of Estates and Trusts

This portion provides guidance for those making payments to nonresident independent contractors, payments of rents or royalties to nonresidents, and distributions to nonresident beneficiaries of estates or trusts.

68. What is the difference between an independent contractor and an employee?

An independent contractor is engaged in a bona fide business that is separate and apart from the business paying him. A bona fide business is subject to profit and loss. An independent contractor is usually contracted to perform specific tasks and has the right to control the way the work is to be accomplished. An independent contractor has a substantial investment in the business and contracts to perform services with more than one business. An employee is subject to the wage withholding provisions administered by the Employment Development Department (EDD). If the nonresident vendor is an independent contractor, withholding is sent to us. A particular withholding agent could have some payees who are employees and others who are independent contractors. Please contact EDD to learn more about the definition of an employee.

69. What are the withholding agent's responsibilities when making payments to subcontractors?

The withholding agent is required to withhold when making payments directly to nonresident subcontractors for services performed in California. To decide if withholding is required when payments to more than one contractor are made, the withholding agent should provide each contractor with:

- Form 587, *Nonresident Withholding Allocation Worksheet*.
- Form 590, *Withholding Exemption Certificate*.

If the withholding agent knows of only one contractor, use the information provided by the contractor-of-record. If the contractor is a resident, no withholding is required. However, if the contractor-of-record is a nonresident, withholding is required on the total payment. Withholding is not required on payments to general contractors who are California residents. However, general contractors must withhold on payments made to nonresident subcontractors for services performed in California.

70. When is withholding required on rent or lease payments made to nonresidents?

Withholding on rent or lease payments to nonresidents is required when all of the following criteria are met:

- Payments are made in the course of the lessee's business (tenants of residential property are not required to withhold on payments made directly to nonresident owners, but payments from property management companies are subject to withholding).

- Rented or leased property is located in California.
- Total payments of California source income to the lesser by the lessee exceed \$1,500 for the calendar year. The withholding only applies when the rentpayers are renting or leasing property in the course of their business from a non-California owner.

Note: Although withholding is not required on rent payments made by tenants directly to owners of residential property, income derived from real property as well as tangible personal property located in California is California source income and is subject to California tax. This includes rents, lease payments, and the gain on the sale of such property.

71. What types of rental or leased property are subject to withholding?

- Real property, such as land and buildings.
- Tangible personal property, such as machinery, equipment, vehicles, aircraft, etc.

72. When is withholding required on royalty payments made to nonresidents?

California requires withholding agents to withhold on royalties paid for the right to use natural resources located in California, including, but not limited to, oil, gas, other minerals, geothermal, and timber. Withholding is also required on royalty or residual payments made to nonresidents for services originally performed in California.

73. Is withholding required on payments to nonresident directors of a corporation when board meetings are held in California?

No. R&TC Section 18662 was amended to eliminate withholding requirements on wages, salaries, fees, or other compensation paid by a corporation for services performed in California by nonresident corporate directors. This includes attendance at a board of directors' meeting.

74. Are information returns required when a person makes payments to a nonresident corporate director?

Yes. An entity paying wages, salaries, fees, or other compensation to a nonresident director must file an information return with FTB and provide the payee with a payee statement. To meet this requirement, the paying entity must file federal Form 1099-MISC with the IRS and provide a copy of the form to the payee.

75. Is withholding required on payments made to nonresident seminar providers for seminars held in California?

Yes. Withholding is required on payments that are compensation for services performed in California by a nonresident.

76. Is withholding required on payments to expert witnesses who are nonresidents?

Yes. Withholding is required on payments that are compensation for services performed in California by a nonresident.

77. When is a trust considered a California trust?
For withholding purposes, a trust is considered a California trust if at least one trustee is a California resident. Withholding is not required on payments to California trusts.

78. When is an estate considered a California estate?
An estate is considered a California estate for withholding purposes when the decedent was a California resident on the date of death.

79. May the trustee of a trust allocate distributions between California and non-California source income based on past year's allocations for withholding purposes?
Yes. If the trustee does not know the amount of California source income included in a distribution, the trustee may use the previous year's ratio of California source income to total income to allocate the distribution.

Entertainment

This portion explains the requirements for those making payments to nonresident entertainers.

80. Is withholding required on previous payments made to a nonresident entertainer if the withholding agent reasonably believed that total payments to a nonresident entertainer for the year would not exceed \$1,500 but later determines that the total payments will exceed \$1,500?
No. Withholding is optional, at the discretion of the withholding agent, on the first \$1,500 in payments made during the year. Withholding must begin as soon as the total payments of California source income for the calendar year exceed \$1,500.

81. How much withholding is required on performance deposits or guarantees?
Regardless of performance deposits or guarantees, venues and promoters are responsible for withholding on the entire contract amount, including any bonuses, assuming total payments exceed \$1,500 in a calendar year. For example, a venue signs a \$10,000 contract with a performer for a performance scheduled for the upcoming year, plus a \$1,000 bonus. The venue is required to place a \$5,000 deposit in an escrow account held by the performer's agent. Calculation: The total contract amount was \$10,000, plus a \$1,000 bonus. The deposit was \$5,000. The venue's or promoter's withholding liability is \$770 (7 percent of \$11,000).

82. Are withholding agents required to withhold tax when the nonresident entertainer's contract states that there shall be no withholding from compensation?
Yes. California law requires the withholding agent to withhold, and the withholding agent can be held accountable for the withholding.

83. Is withholding required on payments made to nonresidents of California for sound and light services provided in California?
Yes. Withholding is required on payments made for sound and light services if payable to a nonresident.

84. What is the procedure if a withholding agent receives a letter instructing them to withhold when no payment is made to the nonresident entertainer because the performance was canceled?
The withholding agent should write "Cancelled" on the letter and return a copy to us with an explanation that withholding was not done because the performance was canceled and no payment was made. We may request additional information to validate the canceled performance.

Domestic Pass-Through Entities

This portion explains the withholding requirements for domestic (nonforeign) nonresident pass-through entities.

85. What are pass-through entities?
Pass-through entities include partnerships, LLCs, S corporations, estates, trusts, etc. A pass-through entity may pass through income or losses to its partners, members, S corporation shareholders, or beneficiaries instead of paying the related tax at the entity level. Partners, members, S corporation shareholders, or beneficiaries must include the pass-through items on their tax returns.

86. May pass-through entities, which are withheld upon, claim the withholding on their own tax returns?
The answer depends on the type of pass-through entity as follows:

- **Partnerships** – Since partnerships have no tax liabilities except for the annual tax paid by limited partnerships, the withholding can only be claimed on Form 565 to the extent that the annual tax is still due at the time the return is filed. Partnerships may not receive a refund of withholding on Form 565. The withholding in excess of the tax due on Form 565 must be allocated to the partners. (Even if the partnership will owe tax with Form 565, the partnership can still choose to allocate the entire withholding to its partners instead of using a portion to offset the tax due.)
- **LLCs** – LLCs can either allocate the entire withholding credit to its members or use a portion of the credit to offset any LLC tax (including nonconsenting nonresident tax) or fees still due with Form 568, *Limited Liability Company Return of Income*, and allocate any excess to its members. LLCs may not receive a refund of withholding on Form 568.
- **Estates and Trusts** – Withholding on estates and trusts must follow the income. If the related income is not being distributed in the current year to the beneficiaries, the withholding credit must be claimed on Form 541, *California Fiduciary*

Income Tax Return. If the related income is being distributed in the current year, the withholding credit must be allocated to the beneficiaries.

- **S corporations** – Since S corporations are taxed at the entity level, S corporations can choose to allocate the withholding credit to their S corporation shareholders, claim the withholding on the S corporation tax return, or use a combination of both. If a pass-through entity claims any of the amount withheld on its tax return, attach Form 592-B or Form 593 from the withholding entity to the front lower portion of the tax return and include a schedule in the body of the return explaining that the remainder of the credit (if any) was allocated. Pass-through entities must also attach a note to Form 592 specifying the amount that will be claimed on its tax return.

87. How do pass-through entities that have been withheld upon allocate or “flow through” the withholding credit?

The withholding must be allocated to all partners, members, S corporation shareholders, or beneficiaries, whether they are residents or nonresidents of California, in proportion to their ownership or beneficial interest. See Form 592 for detailed instructions.

88. Are there different due dates for Form 592 when pass-through entities that have been withheld upon must allocate the withholding credit?

No. Forms 592 are generally due on a quarterly basis. The pass-through entity must identify the income and withholding distribution for each partner on Form 592. If pass-through entities have been withheld upon, they should contact the withholding agent and request to receive the withholding information early so the pass-through entities can file their forms by the quarterly due date. If the pass-through entities still do not get the information in time to file, they should file as soon as they get the information. The pass-through entities should attach a letter to Form 592 stating the reason for filing late and documenting their attempts to get their withholding agents to furnish the information early.

89. When a partnership or LLC is withheld upon, how does it transfer its withholding credit to its partners or members?

When a partnership or LLC is withheld upon, it receives a withholding document (Form 592-B or similar form) from the withholding agent showing how much was withheld. To allocate the amount withheld to its partners or members, it must complete Form 592 showing each partner's or member's share of the withholding. The tax withheld must be allocated to all partners or members, whether residents or nonresidents of California, based on the partner's or member's interest in the partnership or LLC.

90. May a partnership or LLC that is withheld upon claim a refund for the tax withheld?

No. Refunds of withholding credits are not allowed for partnerships or LLCs. Although limited partnerships and LLCs may use the withholding to offset their outstanding tax liability, any excess withholding must be allocated to the partners or members. General partnerships must allocate the entire amount to its partners. A partnership has no tax liability, except for the minimum tax paid by a limited partnership. Form 565, *Partnership Return of Income*, is an information return. The income or loss reported on Form 565 flows through to the partners and is reported on their tax returns. The withholding must follow the income and flow through to the partners. The partners can claim the withholding credit against their individual tax liabilities.

91. Are LLCs required to withhold on nonresident members who have signed form FTB 3832?

Yes. The LLCs must withhold on nonresident members who have signed form FTB 3832.

92. Are LLCs required to withhold on nonresident members if the nonresident members have not signed form FTB 3832 and the LLCs are paying the nonconsenting nonresident tax for the nonconsenting members?

Yes. Payment of nonconsenting nonresident tax does not relieve LLCs of the requirement to withhold on nonresident members. However, LLCs who can show they pay the nonconsenting nonresident tax on all nonconsenting members may request a waiver of withholding on their nonconsenting members.

93. How are S corporations and partnerships notified of the withholding requirements?

We annually mail notices to S corporations and partnerships that are first time return filers. In addition, notice is considered constructively given yearly in the S corporation and partnership return instructions. S corporations and partnerships that do not file California S corporation or partnership returns, when required to file, are still considered to have received constructive notice of the withholding requirements. Constructive notification is considered to have been given on the due date of the S corporation and partnership return (without regard to any extensions of time to file).

94. Is withholding required on distributions by “investment partnerships”?

No. According to R&TC Sections 17955 and 23040.1, income earned by partners in “investment partnerships” from the buying, selling, or holding of “qualified investment securities” is not derived from California sources. Therefore, this income is not subject to withholding. Income of nonresident partners, including banks or corporations, derived from qualified investment securities of investment partnerships is considered income from the partner's state of residence, except as noted below. Therefore, nonresident partners generally will not

be taxed by California on this income. Partnerships should inform their nonresident partners if all or part of their distributive share of income is from qualified investment securities of an investment partnership. Nonresident partners are taxed by California on their distributive share of income from investment partnerships if:

- The qualified investment securities are interrelated with any other business activity of the nonresident partners that is separate and distinct from the investment activity and is conducted in California.
- The qualified investment securities are acquired with the working capital of a California trade or business in which the nonresident owns an interest. A bank or corporation is taxed on its distributive share of income if it participates in the management of the investment activities or is engaged in a unitary business with another taxpayer that participates in managing the investment activities or has income from California sources. An investment partnership is a partnership that meets the following two criteria:

1. No less than 90 percent of the cost of the partnership's assets consist of:
 - Qualifying investment securities.
 - Deposits at banks or other financial institutions.
 - Office equipment and office space reasonably necessary to carry on the activities of an investment partnership.
2. No less than 90 percent of the partnership's gross income is from interest, dividends, and gains from the sale or exchange of qualifying investment securities. Qualifying investment securities include:
 - Common and preferred corporate stock as well as debt securities convertible into common stock.
 - Bonds, debentures, and other debt instruments.
 - Foreign and domestic currency deposits or equivalents and securities convertible into foreign securities.
 - Mortgage or asset-backed securities secured by governmental agencies.
 - Repurchase agreements and loan participations.
 - Foreign currency exchange contracts.
 - Forward and futures contracts on foreign currencies.
 - Stock and bond index securities and futures contracts and other similar securities.
 - Regulated futures contracts.
 - Options to purchase or sell any of the preceding qualified investment securities, except regulated futures contracts. Qualifying investment securities do not include an interest in a partnership unless such partnership qualifies as an investment partnership.

95. How is current year income subject to withholding determined before the end of the year?

The partnership must make a good faith effort to estimate the total amount of California source income for the current year. Where it is impractical or impossible to estimate, use the amount of California source income recognized as of the date of the distribution.

96. Are guaranteed payments to partners subject to withholding?

Yes. If the guaranteed payments represent income from California sources and are not subject to wage withholding through EDD, the payments are subject to withholding.

97. Are distributions of property subject to withholding?

Yes. If the property distribution represents California source income, withholding is required and is based on the fair market value of the property being distributed.

98. Is withholding required on distributions to insurance companies?

No. Insurance companies pay a gross premium tax to the California Department of Insurance instead of California corporation income or franchise tax. Withholding only applies to income or franchise tax.

99. Is withholding required when a partnership makes distributions of California source income to domestic nonresident partners that are partnerships, publicly traded partnerships, or master limited partnerships?

Yes. Unless the partnership receives a waiver, the partnership is required to withhold on all California source income distributions made to these domestic nonresident partners. Waivers are generally approved on distributions by publicly traded partnerships and on distributions to brokerage firms and tiered partnerships upon written request.

100. Is withholding required on distributions that have incurred losses every year?

No. The distributions would be a return of capital if the partnerships have incurred losses every year.

101. When are distributions considered a return of capital as opposed to income distributions?

Distributions are deemed first from distributable income and second as return of capital.

102. If net operating losses (NOLs) are generated in prior years, resulting in NOL carryovers for their S corporation shareholders or partners, is withholding required on current year distributions of California source income?

Yes. We require withholding on distributions of California source income even though NOLs are generated in prior years. NOL carryovers and deductions are determined at the S corporation shareholder or partner level, not at the S corporation or partnership level.

103. If a domestic nonresident S corporation shareholder or partner is an S corporation shareholder or partner in more than one S corporation or partnership, some generating income and others generating losses, may the income and losses be netted to determine if withholding is required?

No. An S corporation or partnership that distributes California source income is required to withhold even though the S corporation shareholder or partner has losses from other California S corporations and partnerships.

104. Is withholding required on distributions of prior year income if the S corporation shareholder or partner has already reported the income to California?

Withholding is not required on distributions of prior year California source income if the S corporation shareholder or partner provides the S corporation or partnership with a signed Form 590-P, *Nonresident Withholding Exemption Certificate for Previously Reported Income*, certifying that the S corporation shareholder or partner previously reported the income on the S corporation shareholder's or partner's California return. The S corporation or partnership may rely on this certification to waive the withholding obligation on that prior year income for that S corporation shareholder or partner.

Foreign (non-U.S.) Partners

105. What income is subject to withholding?

A foreign (non-U.S.) partner's allocable share of California source income is subject to withholding. This is different than domestic nonresident partners where the income subject to withholding is limited to the amount of income being distributed.

106. When are partnerships with foreign (non-U.S.) partners required to withhold for California purposes?

California generally conforms to IRC Section 1446. R&TC Section 18666 requires partnerships to withhold on amounts subject to IRC Section 1446 withholding which represent California source income effectively connected to a California trade or business.

107. Is there a minimum amount of allocable California source income that must be reached before partnerships must withhold on foreign partners?

No. There is no minimum threshold. Partnerships must withhold on all allocable California source income.

108. What entities are subject to foreign partner withholding?

California conforms to the federal definition of foreign partners. Thus, foreign partners who are nonresident alien individuals, foreign corporations, foreign partnerships, foreign estates, or foreign trusts are subject to foreign partner withholding.

109. How can partnerships identify nonforeign partners?

Partnerships should withhold on partners with a foreign address under the foreign partner withholding requirements, unless the partner has documentation to show nonforeign status. Partnerships may rely on a partner's federal certification of nonforeign status. See federal Publication 515, *Withholding Tax on Nonresident Aliens and Foreign Entities*, for acceptable documentation. However, unless the partner is a California resident, the partnership would be required to withhold under the domestic nonresident partner withholding requirements.

110. May foreign partners receive a waiver from withholding or a reduction in withholding?

No. There is no provision in either R&TC Section 18666 or IRC Section 1446 to allow waivers or reduced withholding for foreign nonresident partners.

Reporting and Remitting Withholding Amounts/Due Dates

111. What forms do withholding agents use to report and remit withholding?

Use the following forms to report and remit withholding:

- Form 592, *Quarterly Resident and Nonresident Withholding Statement*, to report the income and withholding amount for each domestic resident or nonresident payee.
- Form 592-A, *Foreign Partner or Member Quarterly Withholding Remittance Statement*, to report the withholding on foreign partners or members of a partnership or LLC.
- Form 592-F, *Foreign Partner or Member Annual Return*, to report the total withholding for the taxable year and allocate the income or gain and related withholding to the foreign partners or members.
- Form 592-B, *Resident and Nonresident Withholding Tax Statement*, is provided to show the amount of income subject to withholding and tax withheld.

112. When are withholding amounts due?

Form 592 and the payment of tax withheld have specific payment due dates:

<i>Period</i>	<i>Payment Made</i>	<i>Due Date</i>
January 1 through March 31	April 15
April 1 through May 31	June 15
June 1 through August 31	September 15
September 1 through December 31	January 15

If the due date falls on a Saturday, Sunday, or legal holiday, the due date will be the next business day. These due dates are the same as the due dates for individual estimated tax payments.

113. Where should withholding agents remit the amounts withheld?

Remit payments with Forms 592 and 592-A to:

**WITHHOLDING SERVICES AND COMPLIANCE
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651**

114. What methods may the withholding agent use to report the information on Form 592?

The information may be reported using the following:

- A completed copy of Form 592, including the schedule of payees.
- A copy of Form 592 with the schedule of payees provided on magnetic media.

Withholding agents may develop withholding forms, making them suitable for computer preparation. However, substitute withholding forms must be in the same format and include all the same information as our form. Withholding agents who wish to use substitute withholding forms must follow the procedures in FTB Pub 1098, *Guidelines for the Development and Use of Substitute, Scannable and Reproduced Tax Forms*.

115. What methods may the withholding agent use to report to the payee the information on Form 592-B?

The information may be reported to the payee using the following:

- Copy B of Form 592-B.
- Copy B of an approved, substitute Form 592-B.
- Two copies of Form 1099. The Form 592-B information must be mailed to the payee by January 31 of the year following the reportable payments unless we have granted an extension to file.

116. Does the IRS 1099 reporting program relieve a withholding agent from the California withholding requirements?

No. The 1099 reporting is a federal program. It is separate from California's nonresident withholding program.

117. How can errors in withholding be resolved?

If tax is withheld in error, contact us at: 916.845.4900 for instruction. Generally, the withholding agent will be instructed to file an amended Form 592 correcting the erroneous withholding.

118. Are transcripts of payments made during the year available to withholding agents upon request?

Yes. To request a transcript, please write to:

**WITHHOLDING SERVICES AND COMPLIANCE
FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-0651**

Or call Withholding Services and Compliance at 916.845.4900.

119. What forms should the performing entity use to allocate withholding credits when the performing entity is a partnership and is distributing compensation to its partners?

Complete Form 592 to report the total amounts withheld for each partner receiving compensation and withholding credit. Attach any forms or letters received from the withholding agent for proof of withholding and send these forms using the next quarterly Form 592 due date. The withholding agent should follow the instructions on Form 592-B for proper distribution of Copies A and B to each nonresident partner withheld upon.

Domestic (nonforeign)

120. What forms do S corporations and partnerships use for withholding on nonresident S corporation shareholders and partners?

Use Form 592 to remit the payment and schedule of payees (S corporation shareholders and partners). Provide each S corporation shareholder or partner a copy of Form 592-B to show the amount subject to withholding and the amount withheld. Please refer to the instructions for Forms 592 and 592-B for more information.

121. How do S corporations and partnerships report individual S corporation shareholder and partner withholding information?

Withholding information is reported on Form 592. S corporations and partnerships must send a copy to us. If an S corporation or partnership is filing 250 or more Forms 592, the Form 592 information must be filed electronically or via magnetic media instead of paper. See FTB Publication 1023S, *Nonresident Withholding Electronic Submission Requirements*, for more information on the required file format and record layout.

122. How do S corporations and partnerships report withholding information to their S corporation shareholders or partners?

S corporations and partnerships must provide each S corporation shareholder or partner who was withheld upon with Copy B of Form 592-B.

123. May S corporations and partnerships use Schedule K-1 to report withholding?

No. Although withholding is included on Schedule K-1, the withholding must be reported using Form 592.

Foreign (non-U.S.) Partners

124. When are withholding payments due for foreign partners?

Withholding payments for foreign partners are due in four equal installment payments during the taxable year in which the California source income is derived and should be submitted with a Form 592-A, *Foreign Partner or Member Quarterly Withholding Remittance Statement*, each time. The due dates are the same as the federal due dates, on or before the fifteenth day after the end of the quarter. If any

additional amounts are determined to be due at the year end, the additional amounts are required to be paid with the filing of Form 592-F, *Foreign Partner or Member Annual Return*.

125. When is Form 592-F due for foreign partners?

The due dates for foreign partners are the same as the federal due dates. Form 592-F is due on or before the fifteenth day of the fourth month (sixth month if all partners are foreign) following the close of the partnership's tax year.

Caution: If the partnership withholds on both domestic nonresident partners and foreign partners, a separate Form 592 should be filed for the domestic partners since the two groups have different due dates.

126. Can partnerships request an extension to file Form 592-F for withholding on foreign partners?

Yes. We will grant an extension to file Forms 592-F for foreign partners if the partnership has received an extension from the IRS to file Form 8804, *Annual Return for Partnership Withholding Tax (Section 1446)*. The IRS approval or denial should be attached to Form 592-F when the Form 592-F is filed.

Caution: If a partnership has both domestic nonresident and foreign partners, the extension is only effective for the filing of the forms for foreign partners. In addition, the extension only extends the due date for filing the forms. It does not extend the due date for any final payment of withholding.

127. If a partnership has received a federal extension to file the partnership return (Form 1065, *U.S. Partnership Return of Income*), does this extension also apply to the filing of Form 592-F?

No. Partnerships must have received an approval to extend the due date to file Form 8804, *Annual Return for Partnership Withholding Tax (Section 1446)*, on federal Form 2758, *Application for Extension of Time to File Certain Excise, Income, Information, and Other Returns*.

128. What should the partnership do if the partnership's estimation of the allocable income for withholding results in an amount being over-withheld at year end based on the partnership's actual allocable income?

When the partnership files Form 592-F, it can either request that the excess credits be applied to the next year's withholding liability or be refunded.

Withholding Agent Liability and Penalties

129. Is interest assessed on late payments of withholding?

Yes. The law requires the assessment of interest on late payments of withholding. Interest is computed from the due date of the withholding payment to the date paid. The imposition of interest is not a penalty. It is compensation to the state for the loss of the use of funds.

130. What is the withholding agent's liability for failure to remit withholding?

A withholding agent who fails to withhold, under withholds, or fails to remit withholding is liable for the greater of:

- The amount actually withheld.
- The amount of taxes due from the nonresident, but not more than the amount required to be withheld.

131. What is the penalty for failing to file complete, correct, and timely information returns (Form 592 schedule of payees)?

Beginning with forms filed for the 2008 tax year, the penalty for the withholding agent is calculated per payee (per the schedule of payees on Form 592, *Quarterly Resident and Nonresident Withholding Statement*):

- \$15 if filed on or before 30 days of the due date.
- \$30 if filed on or before 6 months of the due date.
- \$50 if filed after 6 months of the due date.
- \$100 or 10 percent of the amount required to be reported (whichever is greater), if the failure is due to intentional disregard of the requirement.

For forms filed for tax years 2007 and prior, the penalty is calculated per information return (592-B, *Nonresident Withholding Tax Statement*):

- \$15 if filed on or before 30 days of the due date.
- \$30 if filed on or before August 1.
- \$50 if filed after August 1 or a correct form is not filed.
- \$100 or 10 percent of the amount required to be reported (whichever is greater), if the failure is due to intentional disregard of the requirement.

132. What is the penalty for failing to furnish correct and timely Forms 592-B to payees?

The penalty for the withholding agent failing to furnish correct and timely Forms 592-B to payees is \$50 per form. If the failure is due to intentional disregard of the requirement, the penalty is \$100 or 10 percent of the amount required to be reported (whichever is greater).

133. What is considered a correct Form 592-B?

All required information must be filled out completely and accurately on Form 592-B. (Form 1099 is not acceptable.) If there are more than 250 payees on Form 592, the information must be filed in electronic format. The preferred format for submitting data is Secure Web Internet File Transfer (SWIFT), using the required format in FTB Pub. 1023S. However, the withholding agent may submit the Form 592 information using magnetic media in the required format provided in FTB Pub. 1023S. Paper Forms 592-B must be provided to the payees, even if the number of payees on Form 592 exceeds 250.

134. What is the liability when a withholding agent withheld more than the required amount of withholding but failed to remit the withholding?

If the withholding agent has not returned the excess withholding to the payees, the agent is liable for the amount actually withheld from the payees, plus interest and applicable penalties.

135. What penalties are imposed if the withholding agent used an estimate or computation method for determining the portion of the payments that represents California source income and that estimate or method later proved inaccurate?

Penalties are not imposed on withholding agents who make a good faith effort to comply with the law.

136. Are the policies and penalties related to domestic nonresident partner withholding applicable to foreign partner withholding?

All of the policies and penalties are the same except for the penalty for failing to file correct and timely Forms 592-F.

137. What is the penalty for failing to file complete, correct, and timely Form 592-F schedule of payees with the FTB?

The penalty per the schedule of payees on Form 592-F, *Foreign Partner or Member Annual Return*, or Form 592-B, *Nonresident Withholding Tax Statement*, for tax years 2007 and prior is:

- \$15 if filed on or before 30 days of the due date.
- \$30 if filed on or before 6 months of the due date.
- \$50 if filed after 6 months of the due date.
- \$100 or 10 percent of the amount required to be reported (whichever is greater), if the failure is due to intentional disregard of the requirement.

138. Can penalties be withdrawn?

Yes. If the withholding agent shows that the failure to withhold was due to reasonable cause, the penalties may be withdrawn.

139. What is "reasonable cause"?

"Reasonable cause" is a standard exception to most penalties imposed under the R&TC and the IRC. Generally, reasonable cause exists where the failure to comply occurs despite the exercise of ordinary business care and prudence.

Requirement to File a California Return

140. Does withholding on nonresidents relieve the nonresident of the requirement to file a California tax return?

No. Nonresident individuals or business entities must file a California tax return if they meet the filing requirements. If withholding is more than the actual tax liability, we will refund the overpayment. If withholding is less than the actual tax liability, additional tax will be due.

141. How can nonresidents determine if they have a requirement to file California income tax returns?

In most cases, all nonresidents who receive California source income will have a California filing requirement.

For more information on the California filing requirements, call the numbers listed below:

From within the United States,
call 800.852.5711
From outside the United States,
call (not toll-free) 916.845.6500
For hearing impaired with TDD,
call 800.822.6268

142. Does a waiver of withholding exempt a nonresident from the requirement to file a California return?

No. A nonresident must file a California tax return if the nonresident meets the filing requirements even if a waiver was granted or the nonresident was exempt from withholding.

Where To Get Forms and More Information

143. Where can I get more information about the withholding requirements?

If you have Internet access, you can view, download, and print withholding forms, publications (including additional copies of FTB Pub. 1017) and California tax forms from our website at ftb.ca.gov.

To get withholding forms and publications, or to speak to a representative, contact Withholding Services and Compliance automated telephone service at 888.792.4900 or 916.845.4900 (not toll-free).

Our automated telephone service allows you to access important information seven days a week, 24 hours a day. If the service does not completely answer your questions, you may choose to speak with a representative Monday through Friday between the hours of 8 a.m. and 5 p.m., except state holidays.

144. Are there any publications similar to the federal publications related to foreign (non-U.S.) partners?

No. This is the only California publication with information about withholding on foreign partners.

However, California conforms to IRC Section 1446, and the following federal publications will provide information on the withholding requirements related to foreign partners:

- Publication 515, *Withholding of Tax on Nonresident Aliens and Foreign Entities*
- Publication 519, *U.S. Tax Guide for Aliens*
- Publication 541, *Partnerships*

Copies of these publications may be obtained by contacting the IRS at 800.TAX.FORM or 800.829.3676. You can also access publications and forms at the IRS website www.irs.gov.

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